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UNCLAS SECTION 01 OF 10 LILONGWE 000130

SIPDIS
DEPARTMENT FOR G/TIP- RACHEL YOUSEY
DEPARTMENT ALSO FOR G-LAURA PENA, INL, DRL, PRM, AF/RSA
PASS TO USAID

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KFRD
SUBJECT: MALAWI: 2010 TRAFFICKING IN PERSONS REPORT

REF: 10 STATE 2094 AND PREVIOUS

¶1. SUMMARY. The government of Malawi remains engaged in the fight against trafficking but continues to suffer from a lack of resources. Malawi is a source, transit, and destination country for trafficking and the GOM acknowledges that trafficking is a problem. The Ministry of Women and Child Development is the lead agency in the fight to combat trafficking, but the GOM employs an inter-ministerial approach to the problem. Additionally, the GOM has good working relationships with International Organizations (IO) and NGOs.

¶2. In 2009, there were no significant changes in the laws affecting human trafficking in Malawi, but at least one trafficking-related case resulted in a prison sentence. However reporting systems remain weak, making data collection and assessment of trafficking difficult. The high profile GOM-UNIFCEF "Lekani" awareness campaign against harmful practices including trafficking, child labor, and sexual exploitation ended in early 2009. The government of Malawi continued to operate a rehabilitation center as well work in partnership with numerous NGOs to provide social, counseling, and rehabilitation services to victims as resources allowed. END SUMMARY.

Post provides the following information in response to reftel request. Answers are keyed to reftel paragraphs.

¶3. Paragraph 25. THE COUNTRY'S TIP SITUATION:

¶A. Sources of information include various ministries, government officials, NGOs, and church groups. Much of the information is anecdotal but is generally considered reliable. Few groups have statistics and those that do are usually limited to a single district or smaller area for a limited timeframe. The Ministry of Women and Child Development continues to work to establish a national child protection database to facilitate better information sharing and data collection, but the database remained in development at the end of the reporting period. In 2008, Norwegian Church Aid (NCA) funded a study entitled "Prevention of Trafficking in Women and Children for the Purpose of Sexual Exploitation: Malawi" and the ILO and UNICEF funded a government study on child trafficking in Malawi.

¶B. Malawi is a country of origin, transit, and destination for internationally trafficked men, women, and children. Women and children are the most vulnerable group for trafficking exploitation. Numbers for each group are unknown. Most are trafficked from Malawi to South Africa, Zambia, Mozambique, and Tanzania for both labor and sexual exploitation. Additionally, children and women from Zambia, Mozambique, Tanzania, and Zimbabwe are trafficked to Malawi for labor and sexual exploitation. A 2005 IOM study also identified Europe as a destination of victims trafficked for sexual exploitation.

Incidences of trafficking within the country's borders are higher than international trafficking. The 2008 NCA study estimated 70% of trafficking cases in Malawi are internal. The same report estimated that between 500 and 1500 victims were trafficked internally per year in Malawi and over 400 victims were trafficked across borders.

¶C. Children are most commonly trafficked internally to work as domestics, cattle herders, agricultural laborers, and to do menial work in various small businesses. The Ministry of Women and Child Development and several NGOs also report incidences of young girls moving from rural areas to urban or other rural areas to work as commercial sex workers. Women and girls continue to be forced to become "bar girls" who work at local bars and rest houses where

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they are required to have sex with customers in exchange for room and board.

¶D. Impoverished rural populations are the primary targets for traffickers, and this includes children, women, and some men. Orphans, particularly those cared for by extended family members with their own children, are extremely vulnerable to trafficking. Poverty and lack of education are common factors among all forms of trafficking.

¶E. Traffickers for domestic and agricultural labor are often former villagers who have moved to urban areas. The returnees offer lucrative jobs to children or their guardians and promise to send the salaries to the guardians while providing clothing, food, shelter, and education to the child. Often the trafficker is heralded as a hero by villagers who believe the child will be better off leaving the village. Village headmen and other traditional authorities are also used by traffickers who convince the traditional leader to help recruit children using similar false stories about providing amenities to the children that they often lack in the village. Adult victims are offered lucrative jobs either in other regions of Malawi, neighboring countries, or South Africa.

Adults who run brothels or otherwise act as facilitators for commercial sex lure new underage recruits into prostitution with promises of nice clothing and lodging. Once the young woman or girl arrives at the new location she is charged high rental fees for these items and instructed how to work as a prostitute to pay off the debt. Anecdotal evidence indicates there may be some prostitutes from Zambia and Tanzania working in border areas; however these cannot be confirmed as victims of trafficking. Persons have been trafficked internally for labor and reportedly also to South Africa, Mozambique, Tanzania, and Zambia.

Traffickers involved in land border trafficking to South Africa and Tanzania were typically long-distance truck drivers and mini-bus

operators. Local businesswomen, who also travel regularly to Tanzania, South Africa, and other neighboring countries in order to buy clothing for import, were identified as traffickers as well. In Mchinji, near the Zambian border, one individual was caught trafficking 59 children to Zambia for labor. He was sentenced to five years in jail.

There continues to be anecdotal evidence that Malawi is also a destination for international trafficking.

Victims are generally moved using legitimate travel documents when necessary or moved across porous borders without passing through immigration checkpoints. The easily forged Malawi passport was used to facilitate trafficking. Often, international victims are just hidden in vehicles while the driver passes immigration checkpoints. In other cases, foot and bicycle trails without formal checkpoints are used to facilitate cross-border trafficking. While there is some evidence of organization among traffickers, especially in the transport of people to South Africa, no employment, travel, or marriage agencies have been openly implicated in trafficking.

¶4. Paragraph 26. SETTING THE SCENE FOR THE GOVERNMENT'S ANTI-TIP EFFORTS:

¶A. The Malawi Government acknowledges that trafficking is a problem in the country.

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¶B. A wide variety of GOM agencies are involved in anti-trafficking efforts. The Ministry of Women and Child Development, the Ministry of Home Affairs and Internal Security (which includes police and immigration services) and the Ministry of Labor, along with the Malawi Law Commission, The Malawi Human Rights Commission, and the Director of Public Prosecution have the most significant roles. The Ministry of Women and Child Development is the lead agency in combating trafficking in persons.

There are two committees that primarily monitor human trafficking in Malawi: the National Steering Committee on Orphans and Vulnerable Children, and the National Steering Committee on Child Labor. These committees are of overlapping composition, and trafficking issues are included in both. These committees also oversee the work of four "networks" of NGO's and IO's that collaborate on working on the issues of individuals with disabilities, street children, child labor and TIP.

Most districts have a district child labor committee, a district orphan and vulnerable child (OVC) committee, and a district committee on child rights, all of which could deal with trafficking issues. As with the national steering committees, there is a lot of overlap yet also limited data sharing. There is no guarantee a case reported to a district labor inspector would also be brought to the attention of the district social worker or the police victim support unit. The amount of initiative district committees take varies widely and is often dependent on the individuals working in the district or access to NGO or IO-sponsored projects in the district. In some districts, there is now a combined district child protection committee to facilitate better reporting of cases and collection of data.

¶C. The practical limitations on the GOM's ability to address TIP are many. Malawi is one of the world's poorest countries and

suffers severely from the HIV/AIDS pandemic. Thirty years of dictatorship gave way in 1994 to democratic rule, albeit plagued by corruption. Funding for nearly all public institutions -- police, hospitals, and basic infrastructure -- is inadequate. The Anti-Corruption Bureau (ACB) is responsible for investigating and prosecuting corruption. The ACB continued investigations of immigration, police, and other government officials in 2009, although none were directly related to trafficking.

Malawi depends heavily on foreign aid, international organizations, and multi-national NGOs for funding of most anti-trafficking programs, which sometimes limits the government's discretion on which projects to support and in which districts to place resources. Some projects are delegated to local NGOs due to lack of capacity in government; unclear reporting structures limits data collection and sharing of results. The government's resources to aid victims are extremely limited, though some assistance is provided through various social programs. Most assistance programs are funded by international or faith-based organizations working through domestic NGOs.

¶D. There is little systematic monitoring of human trafficking. Due to the broad range of agencies involved at the central and local government levels, there is not a single point of contact for trafficking-related issues in a community or at the national level. While some data is collected at the district level, there are inadequate reporting structures to compile data at the national level.

In 2008, GOM-ILO-UNICEF released a study on child trafficking. A review on Community Child Protection Workers in Malawi by the Ministry of Women and Child Development and UNICEF was also released. There were no comparable studies completed in 2009.

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¶E. In 2009, Malawi's Parliament passed a National Registration Act which lays the groundwork for a national birth registration system. The act does not, however, make birth registrations compulsory. The registration system itself was still in the development stage at the end of the reporting period.

¶F. The GOM currently lacks the capacity to gather the data required for an in depth assessment of law enforcement efforts. Scarce resources, coupled with the lack of standardized system across Malawi for reporting crime and crime related statistics, hampers the ability to gather reliable, up to date information.

¶5. Paragraph 27. Investigation and Prosecution of Traffickers:

¶A. There were no significant changes to the laws regarding trafficking in persons in Malawi since the last TIP report. Malawi does not have a law specifically forbidding trafficking in persons. The constitution prohibits slavery and servitude, and forbids any form of forced, tied, or bonded labor. According to the Malawi Law Commission, in spite of the fact that the Constitution cannot directly be used to prosecute offenders, reference to the constitution has in the past been essential in prosecuting certain cases related to trafficking.

The penal code contains specific offenses which may be used to prosecute traffickers: Section 140 prohibits the "procuration (or attempts to procure) any woman or girl to become, either in Malawi

or elsewhere, a common prostitute or to leave Malawi with the intent that she may become an inmate of or frequent a brothel in Malawi or elsewhere." Section 141 prohibits the procurement and defilement of a woman or girl by threats, fraud, or administering of drugs. Section 143 criminalizes any person who detains any woman or girl against her will "that she may be unlawfully and carnally known by any man." Living off of the proceeds of prostitution and operating a brothel are illegal according to Sections 145-147.

Sections 257-269 concern offenses against liberty including kidnapping, abduction, and abduction in order to subject a person to grievous harm or slavery. Section 267 prohibits the buying or selling of any person as a slave and section 268 specifically identifies trafficking in slaves as a felony. Section 268 is most often used to prosecute a person involved in trafficking.

In 2009, child labor and kidnapping laws were successfully used to convict at least one trafficker.

Existing laws can be used for the prosecution of TIP, but the lack of specific legislation criminalizing TIP makes prosecution more challenging. In the absence of actual trafficking laws and broad knowledge of how to manage trafficking cases, cases are liable to be handled differently according to the prosecutors and judges involved. Those who have participated in TIP training -- and therefore have some understanding of how to investigate and try TIP cases -- tend to mete out stiffer sentences.

The Child Care, Protection and Justice Bill, which defines child trafficking and sets life imprisonment penalties for convicted traffickers, remains in cabinet and was not passed by Parliament during the reporting period. At the end of the reporting period, the Malawi Law Commission continued work on drafting additional legislation to specifically criminalize trafficking of all types.

1B. Penalties for trafficking for sexual exploitation as delineated under the existing penal code vary according to the different

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articles, but are largely unspecified. Abduction of a woman with intent to have sexual intercourse or with the intention to marry her off is punishable by up to seven years in prison. Child sexual exploitation can be charged under indecent assault of young girls and boys, which carries up to a 15 year prison sentence. There was no data available about the number of arrests, convictions, or penalties for trafficking people for sexual exploitation during the reporting period.

1C. Historically, most of the trafficking cases that have been prosecuted in Malawi involve forced child labor. Penalties for child labor violations vary according to the specific charges. During the year, at least one child labor case resulted in a prison sentence. Minimum wage laws can be used to punish employers who use deceptive offers or switch contracts, but penalties usually amount only to payment of salary in arrears. There was little data available about the number of arrests, convictions, or penalties for trafficking people for labor.

1D. Penalties for rape include life imprisonment and possible death. (Note: No death sentences have been carried out in Malawi's democratic history.) Rape is a felony. In practice, the maximum sentence for rape is 14 years in prison.

¶E. The government prosecuted cases against human trafficking offenders but could not provide the number of investigations, prosecutions, convictions, and sentences given to convicted offenders.

The penal code is used to investigate arrest, prosecute, convict and sentence traffickers. Most are investigated under Section 268, prohibiting the trafficking of slaves, or sections covering abduction or sexual assault. The Employment Act and the minimum wage law can also be used in forced labor and child labor cases.

Labor recruiters who use knowingly fraudulent or deceptive offers or impose inappropriately high fees creating a debt bondage condition can be prosecuted. Employers who confiscate workers' passports or switch contracts can also be prosecuted using the penal code.

There was at least one report of a trafficker being sentenced to jail during the reporting period. In Mchinji district, along the Zambia border, a court sentenced a trafficker of children for labor to five years in prison.

The government has difficulty providing information on investigations, arrests, convictions, and sentences due to the decentralization of magistrates and courts, police, and social welfare officers, the lack of uniform reporting structures, and the lack of reporting systems able to consolidate data at a regional or national level without an extensive manual collection effort.

¶F. The GOM provides specialized training for police, child protection officers, social welfare officers, and other officials in how to recognize, investigate, and prosecute instances of trafficking. During the reporting period, UNICEF, ILO, Norwegian Church Aid, along various local NGOs provided or assisted the GOM with training. The Ministry of Labor incorporated a child protection curriculum into labor inspector training.

¶G. The government has expressed a willingness to cooperate with other governments in the investigation and prosecution of trafficking cases, but requests are handled on an ad hoc basis.

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Informal cooperation between district officials in Mchinji and their counterparts across the Zambian border routinely occurs. Child labor and trafficking victims in Zambia are brought by Zambian authorities to the border, where GOM district officials take over investigation of the cases and repatriation of the victims. The GOM, through the Ministry of Home Affairs and Internal Security, is a member of INTERPOL and SADC's Defense and Security Organization which deals with trafficking.

¶H. GOM officials and the Police indicate that persons charged with trafficking in other countries could be extradited in cases where such action would be appropriate but would be evaluated on a case by case basis. Malawian nationals would likely only be extradited in situations where the national could not be tried for the crime in Malawi. The GOM was not presented with such a case during the reporting period.

I. There is no evidence of government involvement in or tolerance of trafficking, on a local or institutional level.

J. There is no evidence that GOM officials are involved in human trafficking.

K. The Malawi Defense Force had no reports of Malawians participating in peacekeeping or similar missions who engaged in or facilitated severe forms of trafficking or who exploited victims of trafficking.

L. There continue to be anecdotal reports that there may be sex tourism occurring in Malawi. These reports are unsubstantiated, and do not indicate the presence of an actual "industry." Unconfirmed reports indicate that teenage boys and girls have, in the past, provided sexual services for visiting European tourists. Additionally, a 2007 report by ECPAT International claimed that child prostitution is abundant in urban areas at hotels and outside night clubs and that more than 40% of sex workers were girls below the age of 18.

During the reporting year, the GOM was not presented with the opportunity to prosecute any cases related to foreign pedophiles, though officials consistently prosecute pedophiles under a variety of laws. Since homosexuality is illegal and remains generally socially unacceptable in Malawi, prosecutions for this type of prostitution and solicitation could include charges of homosexual acts.

The country's child sexual abuse laws still reside in the Malawi penal code and do not likely have extraterritorial coverage.

16. Paragraph 28. PROTECTION AND ASSISTANCE TO VICTIMS:

A. There is limited protection under existing laws for victims and witnesses. In the case of child victims, some efforts are made to make trials less threatening, but in practice under current law, all victims and witnesses would likely have to confront the accused in a court of law.

B. Malawi has two rehabilitation centers for children in conflict with the law (Blantyre, Zomba) and one social rehabilitation drop-in center (Lilongwe) for TIP and gender-based violence victims. All offer counseling and rehabilitation services and some legal assistance through the NGO, Legal Aid. Medical cases are

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referred to government hospitals. The Police operate 101 victim support units which specialize in handling trafficking and gender-based violence crimes and provide limited forms of counseling and temporary safety. In general, foreign victims have the same access to care as domestic victims, although some foreign victims avoid government centers believing they will be deported.

In addition, the government works with and refers victims to various NGO-run shelters as well. The Salvation Army operates a

child labor victim shelter in Mchinji which offers rehabilitation and training. The NGO Youth Net and Counseling (YONECO) operates a rehabilitation center in Zomba and the NGO Active Youth Initiative for Social Enhancement (AYISE) operates a center in Blantyre. The Chisomo Children's Centers in Lilongwe, Blantyre, and Limbe and Tikondane Street Children's Shelter in Lilongwe provide rehabilitation services and temporary shelter to street and other at-risk children, many of whom were trafficked previously. Children victims are usually referred to one of these facilities or reunited with their families. Some of the above centers also provide specialized care for adult women victims. Specialized care for male victims is limited.

1C. The GOM attempts to provide trafficking victims with access to basic legal (through NGO Legal Aid), medical (through government hospitals), and psychological services, but is limited in its ability to do so. The government provides support to international and domestic NGOs providing services to trafficking victims. Nearly all funding comes from international organizations such as UNICEF and ILO but the GOM provides technical and coordination assistance and helps set project guidelines. The GOM works with NGOs to connect their local programs with labor inspectors, child protection officers, district social welfare officers, the police, and district child protection committees to help facilitate projects. Funding comes from both national and district budgets.

1D. Assistance to foreign victims is limited. In practice, many victims can face deportation unless they challenge their immigration status in court. In extenuating circumstances, the Immigration Department can provide relief from deportation for a short time.

1E. The government has provided shelter, but cannot typically provide for longer-term housing. In many child cases, victims are provided with school supplies and other costs to assist their reintegration into the community. Trafficking victims' families are sometimes trained in income-generating activities to reduce the chances that a victim falls back into trafficking situations.

1F. The government does have a referral process to transfer victims detained by law-enforcement authorities through its victim support units and district child protection committees. In some areas such as Mchinji, NGO shelters work closely with the government to identify and transfer victims.

1G. The total number of trafficking victims identified during the reporting period was unavailable. Of those identified by law enforcement, government said most were referred to care facilities or reunited with their families, but there are no statistics available. The number of victims assisted by government-funded assistance programs was also not known.

1H. Law enforcement, immigration, and social services personnel receive basic training to identify victims of trafficking but there is no formal system to proactively identify victims of trafficking among high-risk persons they come into contact with. The government does not have a mechanism for screening for trafficking victims among persons involved in the commercial sex trade.

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1I. The rights of victims are generally respected. There are no reports of victims treated as criminals. Trafficking victims may be initially detained for short durations during initial investigation.

¶J. The GOM uses evidence gained from victims to investigate and prosecute TIP-related cases. Victims are permitted to file civil suits against perpetrators, and civil society and NGOs offer pro-bono legal services to victims involved in civil and criminal cases. Labor inspectors and child protection officers are trained to advocate for fair remuneration to employees, especially children, in labor disputes and court cases. Victims may obtain restitution although in practice sums have typically been set at the minimum rural wage in the case of forced and child labor. There were no reported statistics for the number of victims who assisted in investigations or prosecutions during the reporting period.

¶K. The GOM trains community child protection workers (CCPW) and places them in each of the 28 districts of the country. These workers are specially trained to recognize child victims of all forms of exploitation, including trafficking, but currently work on a voluntary basis. The government is continuing the process of converting all CCPW from volunteers to Child Development employees. The positions were graded and the first group became employees in ¶2009. The Ministry of Labor employs approximately 120 district labor inspectors trained in Malawi labor law who can identify trafficked children.

Malawian Embassies abroad actively encourage Malawian expatriates to register with the consular section but do not receive formal training on protections and assistance. Malawian embassies do work with IOs and NGOs that bring trafficking cases to their attention. There were no reports of trafficking victims assisted by the embassies abroad during the reporting period. Cross-border victims from Zambia are usually brought to the border by Zambian officials where the GOM then repatriates the victim.

¶L. The GOM provides some assistance, commensurate with resources, to victims. In most cases, the GOM does not have finances to provide adequate assistance and pay for repatriation, depending on cooperation from IOs like IOM and NGOs for repatriation.

¶M. UNICEF, Norwegian Church Aid, ILO, the Salvation Army, PLAN International, and World Vision are among the international organizations and NGOs that work on trafficking in Malawi. Many international organizations provide funding, training, and technical assistance to the GOM and local NGOs and do not receive funding from the GOM. Funding, personnel, and training constraints render the GOM incapable of providing all assistance to victims of trafficking. As such, the GOM works with IOs and NGOs to assist identified TIP victims in areas with projects.

¶7. Paragraph 29. PREVENTION:

¶A. In 2008, the GOM and UNICEF wrapped up an extensive child rights information campaign called "Lekani" ("Stop" in the local language of Chichewa) that included anti-trafficking information. Residual campaign billboards, bumper stickers, and sign with a distinctive handprint on a red background that provide messages against trafficking, early marriage, child labor, trafficking, and sexual exploitation can still be seen in many areas.

During the reporting period, the GOM and local NGOs also conducted

awareness campaigns to address a variety of TIP's root causes, including child abuse, inadequate orphan care and life-skills, child labor, female illiteracy and low education rates, and gender-based violence and discrimination. NGO programs also raise awareness among village headmen, traditional authorities, and other local leaders about trafficking in persons.

1B. The exit-entry system is entirely paper based with limited storage and retention. There is no active analysis done to determine immigration or emigration patterns. All immigration officers receive basic training which includes identification of trafficking situations. Along borders with known trafficking problems, such as Mchinji along the Malawian-Zambian border, law enforcement officers perform basic ad-hoc screening of potential trafficking victims.

1C. There are two national steering committees which include representatives from all major government ministries that combat trafficking. The GOM works with NGOs and civil society through the National Technical Working Group on Child Protection and the National Technical Working Group on Orphans and Vulnerable Children both deal in trafficking related issues.

At the district level, there are child protection committees that incorporate district social welfare officers and child protection workers, labor inspectors, police, immigration, and NGO representatives to facilitate communication about trafficking and coordinate action on specific cases.

1D. The GOM does not currently have a national plan of action to address trafficking in persons. A task force comprised of representatives from the Ministry of Women and Child Development, Ministry of Labor, Ministry of Education, Ministry of Justice, and Ministry of Internal Affairs and Home Security are drafting a national plan but did not complete it before the end of the reporting period. IOs and NGOs have been consulted in the plan development process.

1E. The GOM-UNICEF "Lekani" campaign included messages against sexual exploitation and commercial sex, and materials (billboards, posters and bumper stickers) from this campaign can still be found along roadsides and in public buildings. The National AIDS Commission's (NAC) National Action Framework on HIV/AIDS prevention includes community sensitization on the dangers of transactional sex and attempts to denormalize these behaviors. Additionally, programs implemented under the NAC provide economic activities for at risk women in an attempt to reduce both the supply and demand through economic empowerment. Information campaigns including Abstinence, Be Faithful, and Use Condoms (ABC) messages continue to be part of a national response that targets high risk populations including commercial sex workers and their clients.

1F. The GOM is unaware of participation by any of its nationals in child sex tourism abroad.

1G. The Malawi Defense Force has a zero tolerance policy on human trafficking. Troops are trained during pre-deployment training on modes of engagement that include prohibition of human trafficking consistent with the AU and UN charter. Additionally, the U.S. government's African Contingency Operations and Training Assistance (ACOTA) trained over 50 officers selected to go on peacekeeping missions that included instruction in human rights, gender respect,

elimination of sexual exploitation, and child protection.

¶8. Paragraph 30. PARTNERSHIPS:

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¶A. The GOM recognizes the value of partnerships with civil society and multilateral organizations in the fight against trafficking in persons, and has done much to develop these relations. UNICEF, the ILO, etc., along with local Malawian NGOs, are fully engaged with the GOM and rightly see themselves as respected allies. These partnerships remain underfunded and need further development to be effective.

¶B. The GOM did not provide assistance to other countries to address TIP in 2009.

¶9. Paragraphs 31-33. NEW REQUIREMENTS FOR THE CHILD SOLDIERS PREVENTION ACT:

¶A. Malawi has not been the subject of allegations of unlawful child soldiering. Post has no information, anecdotal or otherwise, that unlawful child soldiering has taken place in the reporting period.

¶10. Post POC for TIP issues is Political Officer John T. Ice, phone 265-1-773-166 x. 3463, IVG 835-3463, fax 265-1-772-316. Time spent on TIP report: principal drafting, Pol Officer, 20 hours; LES Political Assistant, 20 hours; Clearance: DCM, 1 hour; AMB, 1 hour. BODDE